

(S E R V E D)
(November 22, 2004)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

November 22, 2004

DOCKET NO. 03-06

**MONARCH SHIPPING LINES, INC., AMERICAN LINES LLC,
MOZART FORWARDING, INC., AND PETER KAROUTA KENNEDY**

**APPROVAL OF SETTLEMENT;
CONSENT ORDER**

The Bureau of Enforcement (BOE) and Respondents Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Peter Karouta Kennedy (Respondents) have reached agreement to settle this proceeding. They have jointly requested that I approve their agreement and enter an appropriate consent order. The request is well explained, supported by legal authority and fully meets the criteria for approval of settlement agreements in Commission proceedings. Accordingly, as explained below, the settlement agreement is approved pursuant to 46 C.F.R. § 502.603(a) and the proceeding will be terminated by entry of an appropriate consent order subject to Commission review pursuant to 46 C.F.R. § 502.227(c).

Procedural History

On June 17, 2003 , the Commission issued an Order of Investigation to determine whether Respondents, 1) violated section 8(a) of the 1984 Act and the Commission's regulations by operating for a certain period of time as common carriers without publishing tariffs showing all of their active rates and charges, 2) violated section 10(b)(2)(A) of the 1984 Act by knowingly and willfully providing service in the liner trade at rates and charges other than those specified in then published tariffs, 3) violated section 19 of the 1984 Act and the Commission's regulations by operating as non-vessel-operating common carriers in the U.S. trades without obtaining licenses from the Commission and providing proof of financial responsibility in the form of surety bonds, and 4) violated the Commission's regulations by knowingly and willfully misleading the Commission by failing to disclose required information on the FMC-18 application filed by Mozart Forwarding, Inc., to obtain a license to operate as an NVOCC.

After the receipt of evidence from both sides and the conduct of two days of evidentiary hearings, the parties negotiated a settlement that they jointly submitted for my review and approval. For the reasons set forth below, I have concluded the settlement should be approved and an appropriate consent order entered to implement the agreement of the parties.

Reasonableness of the Settlement Agreement

BOE contends that the evidence would show Respondents engaged in the business of transporting motor vehicles from the United States to ports in the Caribbean representing to the public that transportation was provided as a vessel-operating common carrier while in actuality the transportation was provided by others through short term space charters. BOE further contends the evidence would show material undercharges from published tariffs when the tariffs were belatedly

published. And finally, BOE contends the evidence would show material errors of fact were knowingly made on license applications filed by Respondents with the Federal Maritime Commission.

Respondents have disputed BOE's assertions and contend the evidence would show the Respondents operated a business of transporting motor vehicles from the United States to ports in the Caribbean through the use of vessels fully chartered from others and operated by Respondents. Respondents further contend that all freight charges were made pursuant to published tariff rates as adjusted for unique circumstances of particular customers as provided for in the tariffs. And finally, Respondents contend that all license applications were filed with accurate information to the extent known to the Respondents. Both parties believe the settlement they negotiated makes it unnecessary for these disagreements on the evidence to be resolved in this proceeding.

Under the terms of the settlement agreement, BOE believes Respondents have taken measures to prevent the reoccurrence of such practices in the future. In consideration of the actions taken and promises given and in compromise of all potential civil penalties arising from the alleged violations, Respondents and BOE have agreed upon the following terms and conditions of settlement which, as required at 46 C.F.R. § 502.603(a), are recited as follows:

1. Respondents Monarch Shipping Lines, Inc. and American Lines LLC admit they violated sections 10(b)(2) and 19 of the Shipping Act of 1984, as amended, by unlawfully holding out to the public that they were operating as ocean common carriers, through the device or means of short term voyage or time charters;
2. Respondents jointly agree and consent to the entry of an order against all Respondents directing each of them to cease and desist from holding out to be

operating an ocean common carrier service in the United States foreign trades for a period of two (2) years from the date of approval of this settlement by the Commission;

3. Consistent with the consent order provided above, Respondents will undertake the following additional actions within thirty (30) days of the approval of this settlement by the Commission:
 - a) Except as provided in subparagraph (e) below, Respondents Monarch Shipping Lines, Inc. and Peter Karouta Kennedy shall cease any further business operations of Monarch Shipping Lines, Inc.;
 - b) Except as provided in subparagraph (e) below, Respondents American Lines LLC and Peter Karouta Kennedy shall cease any further business operations of American Lines LLC;
 - c) Respondents Monarch Shipping Lines, Inc., American Lines LLC and Peter Karouta Kennedy shall file with the Commission the necessary papers evidencing cancellation of the ocean common carrier ("VOCC") tariffs of Monarch Shipping Lines, Inc. and American Lines LLC;
 - d) Except as provided in subparagraph (e) below, Respondent Peter Karouta Kennedy shall cease any business operations of Monarch Shipping Agency, Inc., and American Lines International Inc., relating to the ocean transportation of property in trades regulated by the Commission. Respondent Peter Karouta Kennedy has agreed and stipulated that non-Respondents Monarch Shipping Agency Inc. and American Lines

International Inc. are companies owned or controlled by Peter Karouta Kennedy which provided services to Respondents herein relating to the ocean transportation of property; and

- e) Nothing contained in the settlement agreement is intended to bar Respondents from pursuing any claims against third parties based upon pre-existing contractual rights asserted by the Respondents.
4. Respondents Mozart Forwarding, Inc. and Peter Karouta Kennedy withdraw the current OTI/NVOCC license application of Mozart Forwarding, Inc. Peter Karouta Kennedy, Mozart Forwarding, Inc., or a company owned or controlled by Peter Karouta Kennedy may submit a new OTI/NVOCC application no sooner than six (6) months from the date of the settlement agreement. Such OTI/NVOCC application shall be considered directly by the Commission in the manner provided under 46 C.F.R. § 515.17. Except as may be directed by the Commission in any Order served with respect to such application, the Bureau of Enforcement may submit comments thereon only to the extent of furnishing information as to Respondents' activities subsequent to the date of the Settlement.
5. For a period of two (2) years from the date of approval of this settlement by the Commission, Respondent Peter Karouta Kennedy has agreed he will not, directly or indirectly, engage in any business activities as a regulated entity (other than as an OTI) in any trade regulated by the Commission, except where acting as a bona fide employee of a regulated entity. During such period, Peter Karouta Kennedy shall not act as an officer or director of a regulated entity (other than as an OTI) in any trade

regulated by the Commission, nor shall he purchase or maintain stock or other ownership interest in any other regulated entity (other than as an OTI), whether directly or indirectly.

This Agreement is subject to approval by the Commission in accordance with 46 C.F.R. § 502.603.

DISCUSSION

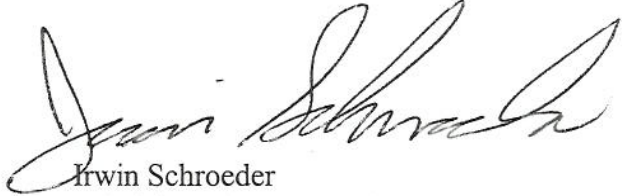
The Commission, like the courts, strongly encourages settlements and, absent any showing that they contravene any law or public policy, presumes that they are just and reasonable, although not acting as a mere rubber stamp. *See, e.g., Old Ben Coal Co. v. Sea-Land Service, Inc.*, 21 F.M.C. 505, 512-515 (1978); *Great White Fleet v. Southeastern Paper Products, Inc.*, 26 S.R.R. 1487, 1488-1490 (1994).

The Commission's rules of procedure have long provided for settlements and are consistent with the importance given by the Administrative Procedure Act in the facilitation of settlements. *See, e.g., 46 C.F.R. 502.91(a); 502.94(a)(1); 5 U.S.C. § 554(c)(1).* I find nothing in the settlement agreement that would contravene any law or public policy. The proposed agreement considers the merits of each side's case and provides a candid assessment of the costs and uncertainties of litigation

Based on the foregoing, the settlement agreement is approved pursuant to 46 C.F.R. § 502.603(a) and a consent order is entered subject to the review of this ruling by the Commission pursuant to 46 C.F.R. 502.227(c).

CONSENT ORDER

Pursuant to the agreement and consent of the parties, the settlement agreement executed by the parties on November 18, 2004, is approved and the parties are ordered to comply with all of the terms of the agreement. This constitutes all of the relief to be granted in this proceeding and the proceeding is discontinued.



Irwin Schroeder
Administrative Law Judge

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 03-06

MONARCH SHIPPING LINES, INC., AMERICAN LINES LLC,
MOZART FORWARDING, INC., AND PETER KAROUTA KENNEDY

POSSIBLE VIOLATIONS OF SECTIONS 8(a),
10(b)(2)(A), AND 19 OF THE SHIPPING ACT OF 1984, AS
WELL AS THE COMMISSION'S REGULATIONS AT
46 C.F.R. PARTS 515 AND 520

**SETTLEMENT AND AGREEMENT
FOR ENTRY OF CONSENT ORDER**

Whereas, the Federal Maritime Commission ("Commission") has instituted a formal proceeding, Docket No. 03-06, against the undersigned Respondents Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Peter Karouta Kennedy, to determine, *inter alia*, the following issues:

- 1) whether Monarch Shipping Lines, Inc. and American Lines LLC violated section 8(a) of the 1984 Act and the Commission's regulations at 46 CFR pt. 520 by operating, for a certain period of time, as common carriers without publishing tariffs showing all of their active rates and charges;
- 2) whether Monarch Shipping Lines, Inc., American Lines LLC, and Peter Karouta Kennedy violated section 10(b)(2)(A) of the 1984 Act by knowingly and willfully providing service in the liner trade at rates and charges other than those specified in Monarch's and American Lines' respective tariffs;

3) whether Monarch Shipping Lines, Inc., American Lines LLC, and Peter Karouta Kennedy violated section 19 of the 1984 Act and the Commission's regulations at 46 CFR pt. 515 by operating as non-vessel-operating common carriers in the U.S. trades without obtaining licenses from the Commission and without providing proof of financial responsibility in the form of surety bonds;

4) whether Mozart Forwarding, Inc. and Peter Karouta Kennedy violated the Commission's regulations at 46 CFR pt. 515 by knowingly and willfully misleading the Commission in their failure to disclose required information on the FMC-18 application filed by Mozart Forwarding, Inc. to obtain a license to operate as an NVOCC;

Whereas, section 13(c) of the Shipping Act of 1984, and Part 502 of the Commission's Regulations, 46 C.F.R. Part 502, authorize the Commission to enter compromise agreements and settlements in formal proceedings arising from alleged violations;

Whereas, Respondents have stipulated to the entry of a Consent Order based upon certain admissions of violations of the Shipping Act of 1984;

Whereas, in consideration of such stipulations by the Respondents, the Bureau of Enforcement has stipulated that no civil penalties for such violations should be assessed; and stipulated also that the Bureau of Enforcement will not pursue findings of further violations or the assessment of additional penalties thereon against Respondents for other alleged violations of the Shipping Act of 1984, as amended;

Whereas, Respondents have terminated the practices which are the basis of the alleged violations set forth herein, and have indicated their willingness to institute practices which will avoid and prevent further violations; and,

Whereas, the Bureau of Enforcement and Respondents believe it is in the best interests of the parties and the shipping public to resolve the above referenced proceedings rather than engage in costly litigation, the outcome and timing of which is uncertain;

NOW THEREFORE, in consideration of the premises herein, Respondents and the Bureau of Enforcement hereby agree upon the following terms:

1. Respondents Monarch Shipping Lines, Inc. and American Lines LLC hereby admit that they violated section 10(b)(2) and 19 of the Shipping Act of 1984, as amended, by unlawfully holding out to the public that Respondents were operating as ocean common carriers, through the device or means of short term voyage or time charters;

2. Respondents jointly agree and consent to the entry of an Order against Respondents Monarch Shipping Lines, Inc., American Lines LLC and Peter Karouta Kennedy directing each of them to cease and desist from holding out to operate an ocean common carrier service in the United States foreign trades for a period of two (2) years from the date of approval of this Settlement.

3. Consistent with the Order provided for in paragraph no. 2 above, within thirty (30) days hereof, Respondents shall undertake the following additional actions in furtherance of this Agreement:

- a) Except as provided in subparagraph (e), Respondents Monarch Shipping Lines, Inc. and Peter Karouta Kennedy shall cease any further business operations of Monarch Shipping Lines, Inc.;
- b) Except as provided in subparagraph (e), Respondents American Lines LLC and Peter Karouta Kennedy shall cease any further business operations of American Lines LLC;

- c) Respondents Monarch Shipping Lines, Inc., American Lines LLC and Peter Karouta Kennedy shall file with the Commission the necessary papers evidencing cancellation of the ocean common carrier ("VOCC") tariffs of Monarch Shipping Lines, Inc. and American Lines LLC ;
- d) Except as provided in subparagraph (e), Respondent Peter Karouta Kennedy shall cease any business operations of Monarch Shipping Agency Inc. and American Lines International Inc., relating to the ocean transportation of property in trades regulated by the Commission. Respondent Peter Karouta Kennedy hereby stipulates that non-Respondents Monarch Shipping Agency Inc. and American Lines International Inc. are companies owned or controlled by Peter Karouta Kennedy which provided services to Respondents herein relating to the ocean transportation of property; and
- e) Nothing contained in this paragraph 3 is intended to bar Respondents from pursuing any claims against third parties based upon pre-existing contractual rights asserted by the Respondents.

4. Respondents Mozart Forwarding, Inc. and Peter Karouta Kennedy agree that the current OTI/NVOCC application of Mozart Forwarding, Inc. is withdrawn. Peter Karouta Kennedy, Mozart Forwarding, Inc., or a company owned or controlled by Peter Karouta Kennedy may submit a new OTI/NVOCC application no sooner than six (6) months from the date of this Agreement. Such OTI/NVOCC application shall be considered directly by the Commission in the manner provided under 46 C.F.R. § 515.17. Except as may be directed by the Commission in any Order served with respect to such application, the Bureau of Enforcement may submit comments thereon

only to the extent of furnishing information as to Respondents' activities subsequent to the date of this Agreement.

5. For a period of two (2) years from the date of approval of this Agreement by the Commission, Respondent Peter Karouta Kennedy agrees that he will not, directly or indirectly, engage in any business activities as a regulated entity (other than as an OTI) in any trade regulated by the Commission, except where acting as a bona fide employee of a regulated entity. During such period, Peter Karouta Kennedy shall not act as an officer or director of a regulated entity (other than as an OTI) in any trade regulated by the Commission, nor shall he purchase or maintain stock or other ownership interest in any other regulated entity (other than as an OTI), whether directly or indirectly.

6. The Bureau of Enforcement hereby agrees and stipulates that no civil penalties shall be assessed against Respondents for such violations alleged or admitted hereunder.

7. The Bureau of Enforcement hereby waives such further rights it may have under 46 C.F.R. § 502.154 as to the presentation of its case in Docket No. 03-06, and Respondents likewise waive such further rights as Respondents may have to submit any further defense herein.

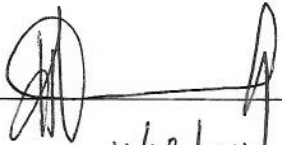
8. Should this Settlement and Agreement for Entry of Consent Order not be approved by the Commission, whether in whole or in part, this agreement shall be void thereafter and unenforceable as to any party hereto.


9. Upon approval of this Settlement and the entry of a cease and desist order by the Commission as provided above, the Commission shall discontinue FMC Docket No. 03-06.

FOR THE RESPONDENTS:

Peter Karouta Kennedy, in his individual capacity


American Lines LLC


Date: 11/18/04

By: 
Date: 11/18/04

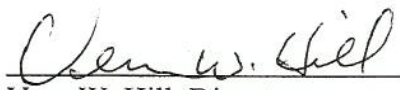
Monarch Shipping Lines, Inc.

Mozart Forwarding, Inc.

By: 
Date: 11/18/04

By: 
Date: 11/18/04

FOR THE BUREAU OF ENFORCEMENT:


Vern W. Hill, Director

Date: 11/18/04